

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions
Brian M. Gibbons, Circuit Court Judge

Appellate Case No.: 2013-002510

71902

THE STATE,.....Respondent

v.

JOSEPH WRIGHT, JR.....Appellant

HOMEOWNERS MORTGAGE ENTERPRISES, INC.'S
MOTION TO INTERVENE

RECEIVED

APR 17 2014

SC Court of Appeals

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ATTORNEY FOR INTERVENOR

The undersigned, as counsel for Homeowners Mortgage Enterprise, Inc., moves for an order allowing it to intervene in this appeal.

The grounds for this motion are as follows:

In November, 2001, Appellant, Joseph Wright, stole the identity of Amos Price and used his identity to defraud Homeowners Mortgage Enterprise, Inc. (hereinafter "Homeowners"). See *In re Charles Johnson*, 386 S.C. 550, 689 S.E.2d 623 (2010) (giving the background facts) (Ex. A); see also Consent Judgment, entered September 22, 2004 (Ex. B) (entering judgment in the case of *Homeowners Mortg. Enter., Inc. v. Joseph Wright, Jr.*, No. 03-CP-40-3665). His fraud cost Homeowners \$150,495.61 in damages and attorney's fees. See September 22, 2004 Consent Judgment.

Mr. Wright pled guilty to three counts of criminal fraud and was ordered to pay restitution to Mr. Price and to Homeowners. See Order of Restitution, entered July 18, 2007 (compensating Homeowners for losses resulting from *State v. Wright*, Nos. 03-GS-40-5502, 03-GS-40-5503, 03-GS-40-5504) (Ex. C). In 2007, the Court of General Sessions entered a new order of restitution, providing as follows: The remaining balance of the restitution still owing was agreed to be \$100,000, with \$25,000 to be paid by June 10, 2007 and the remaining \$75,000 plus 20% pursuant to SC Code § 17-25-322(C) (for a total of \$90,000) to be paid monthly over four years. *Id.* The court ruled that should Wright default, Homeowners, the Attorney General, the Solicitor, or an agent of the Department of Probation and Parole could move the court for a hearing to show cause why Wright's default should not be treated as a civil judgment or for a determination by the court of any further remedy due. *Id.*

Mr. Wright made monthly payments for a good while but missed his October and November 2010 payments. *See* Table of Payments (Ex. D). He then paid \$3,750 on January 14, 2011, but did not make another payment, and Homeowners requested a probation hearing on March 14, 2011. *See* Letter to Agent Richard Weiss (Ex. E). Because Mr. Wright had meanwhile moved to Lancaster County, the requested probation hearing was not set.

Finally, a probation hearing was held on September 6, 2013. His balance at that time was \$43,552.00. *See* Table of Payments at 2 (Ex. D). During the hearing Mr. Wright admitted he owed the money and admitted he could have made the payments had he wanted to (that is, he admitted that he was in wilful contempt of the restitution order). *See* Transcript of Joseph Wright Hearing at 6 (Ex. F). In conformity with what occurred during the hearing, counsel for Homeowners prepared a proposed consent order and sent it to Mr. Wright's criminal defense attorney. *See* E-mail to Harrison Saunders, sent September 24, 2013 (Ex. G). After Mr. Wright refused to sign the proposed consent order, Judge Gibbons struck through the blanks for the proposed consents and signed the proposed consent order. *See* Order, entered November 20, 2013 (Ex. H).

Rather than making a payment, Mr. Wright appealed Judge Gibbons' November 20 order. While that appeal was pending, Homeowners filed a motion to hold Mr. Wright in contempt. Judge Gibbons scheduled the motion for a hearing, but this Court entered an order declaring that because Judge Gibbons' order created a mechanism by which the court had the power to resolve a civil dispute between Mr. Wright and Homeowners that the court of General Sessions would not otherwise have, Judge Gibbons' order was automatically stayed. *See* Order of the South Carolina Court of Appeals, entered by Chief Judge Few on March 12, 2014 (Ex. I).

As determined by Judge Few, this appeal involves the rights of Homeowners, and the Solicitor has neither filed an initial respondent's brief nor returned telephone calls from the undersigned. Homeowners only learned of the Solicitor's failure to file an initial respondent's brief on March 14, 2014, so this application is timely.

Homeowners has an interest relating to the property or transaction that is the subject of the action, as shown in Judge Few's order. Without intervention, this Court would be called upon to determine Homeowner's rights without its input and without the benefit of the advocacy of the Solicitor.

Homeowners' interests are not being adequately represented by the Solicitor because he did not file an initial respondent's brief.

Homeowners is not aware of any authority dealing with the issue of intervention on appeal. Rule 24 of the South Carolina Rules of Civil Procedure and related case law would seem to set a good framework for considering motions to intervene in matters on appeal.

Under Rule 24(a), upon timely application "anyone shall be permitted to intervene in an action (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." And that is precisely our situation here. See also *Berkeley Elec. Coop., Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 394 S.E.2d 712 (1990), where the court noted that a governmental entity's representation of a private party's interests does not constitute adequate representation.

Homeowners is therefore informed and believes that it should be allowed to intervene in this appeal and serve and file an initial respondent's brief, to designate matter to be

included in the record on appeal, and otherwise to protect its interests and fully participate in this appeal.



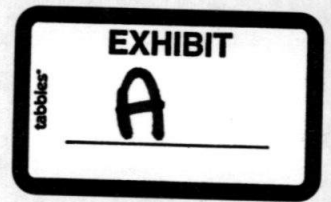
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ATTORNEY FOR INTERVENOR

April 11, 2014

EXHIBITS

- A. *In re Charles Johnson*, 386 S.C. 550, 689 S.E.2d 623 (2010).
- B. Consent Judgment, entered September 22, 2004.
- C. Order of Restitution, entered July 18, 2007.
- D. Table of Payments.
- E. Letter to Agent Richard Weiss.
- F. Transcript of Joseph Wright Hearing.
- G. E-mail to Harrison Saunders, sent September 24, 2013.
- H. Order, entered November 20, 2013.
- I. Order of the South Carolina Court of Appeals, entered on March 12, 2014.



386 S.C. 550
Supreme Court of South Carolina.

In the Matter of Charles E. JOHNSON,
Respondent.

No. 26774. | Heard Nov. 30, 2009. | Decided
Feb. 16, 2010.

Synopsis

Background: Disciplinary proceedings were brought against attorney. The Hearing Panel of the Commission on Lawyer Conduct recommended an indefinite suspension.

Holdings: The Supreme Court held that:

- [1] attorney's conduct violated rules, and
- [2] one-year suspension was warranted.

Suspension ordered.

West Headnotes (8)

- [1] **Attorney and Client**
 - ☞ Jurisdiction of Courts
 - Attorney and Client**
 - ☞ Discretion

The Supreme Court has the sole authority to discipline attorneys and to decide the appropriate sanction after a thorough review of the record.

Cases that cite this headnote

- [2] **Attorney and Client**
 - ☞ Review

While the Supreme Court may draw its own conclusions and make its own findings of fact in an attorney disciplinary matter, the unanimous findings and conclusions of the Hearing Panel of the Commission on Lawyer Conduct are entitled to much respect and

consideration.

Cases that cite this headnote

- [3] **Attorney and Client**
 - ☞ Misconduct as to Client

Attorney's conduct, in bringing action against a former client in automobile accident case, despite not having former client's permission to do so and despite current client's instructions not to do so, violated rules of professional conduct requiring attorney to provide competent representation, requiring attorney to abide by client's decisions regarding scope of representation, requiring attorney to act with reasonable diligence, prohibiting attorney from representing a client if representation is adverse to another client's interests unless both clients consent, and governing attorney's duty of loyalty to former clients. Appellate Court Rule 407, Rules of Prof.Conduct, Rules 1.1-1.3, 1.7, 1.9.

Cases that cite this headnote

- [4] **Attorney and Client**
 - ☞ Falsification or abstraction of records or papers
 - Attorney and Client**
 - ☞ Misconduct as to Client

Attorney's actions, in failing to appear at closing of client's purchase of real estate, allowing his secretary to conduct the closing and sign his name to a Housing and Urban Development (HUD) statement, and allowing secretary to notarize a statement indicating attorney was present at closing, violated rules requiring attorney to provide competent representation, requiring attorney to act with reasonable diligence, governing responsibilities for non-lawyer assistants, prohibiting attorney from assisting another in unauthorized practice of law, prohibiting violation of professional rules, and prohibiting conduct prejudicial to the administration of justice. Appellate Court Rule 407, Rules of Prof.Conduct,

Rules 1.1, 1.3, 5.3, 5.5, 8.4(a, e).

Cases that cite this headnote

[5]

Attorney and Client

☞ Weight and sufficiency

Clear and convincing evidence, as required to support finding of professional misconduct, did not show that attorney actively participated in fraudulent scheme under which mortgage broker assumed identity of attorney's client, took out mortgage for home in client's name, and moved into home; even though broker testified that he had used attorney's office in carrying out scheme, broker also testified that attorney had no knowledge of scheme, and attorney was never indicted for any offense arising from scheme.

Cases that cite this headnote

[6]

Attorney and Client

☞ Misconduct as to Client

Attorney's conduct in 13 real estate closings, in filing Housing and Urban Development (HUD) statements and disbursement sheets reflecting incorrect, inaccurate, and sometimes missing important information, violated rules requiring attorney to provide competent representation, requiring attorney to act with reasonable diligence, prohibiting attorney from making a false statement of material fact to third persons, governing responsibilities for non-lawyer assistants, and prohibiting violation of professional conduct rules. Appellate Court Rule 407, Rules of Prof. Conduct, Rules 1.1, 1.3, 4.1(a) 5.3, 8.4(a).

Cases that cite this headnote

[7]

Attorney and Client

☞ Factors in mitigation

Mitigating factor to be considered in

determining sanction for attorney who failed to appear at client's real estate closing, filed inaccurate documents in other closings, and sued former client without former client's permission, was that attorney had practiced for over 25 years with no prior disciplinary history.

1 Cases that cite this headnote

[8]

Attorney and Client

☞ Definite Suspension

One-year suspension was warranted for attorney who failed to appear at client's real estate closing, filed inaccurate documents in other closings, and sued former client without former client's permission, in violation of rules including those requiring attorney to provide competent representation, requiring attorney to act with reasonable diligence, governing responsibilities for non-lawyer assistants, prohibiting attorney from assisting another in unauthorized practice of law, prohibiting violation of professional rules, and prohibiting conduct prejudicial to the administration of justice. Appellate Court Rule 407, Rules of Prof. Conduct, Rules 1.1-1.3, 1.7, 1.9, 4.1(a) 5.3, 5.5, 8.4(a, e).

Cases that cite this headnote

Attorneys and Law Firms

****624** Henry Dargan McMaster, Attorney General, and James G. Bogle, Jr., Senior Assistant Attorney General, both of Columbia, for Office of Disciplinary Counsel.

Charles E. Johnson, pro se, of Columbia.

Opinion

PER CURIAM.

***552** In this disciplinary matter, the Office of Disciplinary Counsel (ODC) brought formal charges against Respondent Charles E. Johnson arising out of his alleged neglect of a client's case and his failure to follow proper procedures in

numerous real estate closings. In one particular closing, ODC alleged Respondent was not present at the closing. In another closing, ODC alleged Respondent was responsible for a real estate transaction involving mortgage fraud. A Hearing Panel of the Commission on Lawyer Conduct ("the Panel") found ODC's allegations to be true and recommended an indefinite *553 suspension as a result of the misconduct. We agree with the Panel in substantial part, but we find ODC failed to meet its burden of proof that Respondent actively participated in the transaction involving mortgage fraud. Based on the proven misconduct, we suspend Respondent **625 for one year from the practice of law.

I.

a. Longwood Matter

On February 20, 1998, Pamela Longwood and Beverly Sumter retained an associate with Respondent's firm to represent them regarding an automobile accident that had occurred just days prior. Longwood and Sumter, who are cousins, informed the associate that they were involved in an accident with James Usher and that Sumter was the driver and Longwood was her passenger. Subsequently, the associate left Respondent's firm, and Respondent assumed representation in May 1999. In July 1999, Usher filed suit against Sumter, the at-fault driver. As a result of this suit, Respondent learned of a potential conflict of interest between Sumter and Longwood and terminated his representation of Sumter. In April 2001, two months after the expiration of the statute of limitations, Respondent filed suit against Usher and Sumter, despite Longwood's continued instructions not to file suit against her cousin.¹ The case was dismissed as time-barred.

b. Cantey Closing Matter

Amanda Cantey purchased a home in which her father, Amos Price, was the co-signor. Respondent served as the closing attorney, and Joseph Wright served as the broker. The closing documents indicated that the closing took place on October 2, 2001. ODC alleged Respondent could not have been present at the closing at his office in Columbia because he was attending the public defenders conference in Myrtle Beach on this date.

*554 c. Amos Price/Joseph Wright Matter

On November 29, 2001, approximately two months after the Cantey closing, Respondent conducted a closing on a \$340,000 home located in the Spring Valley subdivision in Columbia. The HUD statement indicated that Amos Price, Cantey's father, was the borrower and the purchaser of the home. In 2003, the mortgage company began contacting Price regarding his failure to make mortgage payments on the Spring Valley home. Price and his family informed the mortgage company that he had not purchased the home, and he did not know how or why the mortgage was listed under his name.

An investigation revealed that Joseph Wright, the broker involved in the Cantey closing, had assumed Amos Price's identity and had moved into the home. Wright was indicted for financial identity fraud and pled guilty to forgery. ODC alleged Respondent knowingly participated, either directly or indirectly, in the fraudulent transaction.

d. Various Real Estate Closing Matters

ODC examined a number of Respondent's files involving real estate closings. ODC presented HUD statements and disbursement statements from thirteen unrelated closings conducted by Respondent to the Panel. The statements contained numerous and significant financial discrepancies.

II.

At the hearing before the Panel, Sumter and Longwood testified that Respondent never warned them of the potential conflict of interest. Moreover, Sumter testified that Respondent did not obtain her consent to sue her despite her status as a former client. Longwood testified that she had specifically instructed Respondent not to sue Sumter and never directed him otherwise.

Regarding the Cantey closing, Amanda Cantey testified that Respondent was not at the closing on October 2, 2001. Cantey stated that she, her husband, Wright, and Beulah Stallings, who is Respondent's secretary and sister, were the only individuals present at the closing. She testified she

had never been to Respondent's office prior to this closing and that only one meeting took place. Cantey further testified the signatures *555 on the documents relating to the Spring Valley closing were not her father's signatures, her father was not involved in the Spring Valley home purchase, and he was unaware of Wright's actions.²

****626** ODC called Wright to testify as to the Price/Wright matter. He testified that he had received the loan closing documents from the lender and then compiled the forged documents prior to the closing. He admitted that he had contacted Amanda Cantey and Amos Price and falsely told them he needed to make another copy of Price's driver's license for the Cantey file. Wright stated that the closing took place in Respondent's office and Respondent was not present, but Stallings was present at the closing. Wright maintained that he acted alone in forging the documents and neither Respondent nor Stallings had knowledge of his scheme. Respondent declined to cross-examine Wright.

As to the various real estate closings that ODC examined, ODC called Andrew Syrett to testify. Syrett served as the seller's attorney and Respondent represented the buyer in a transaction in which the buyer had been renting the home on a lease/purchase contract. Syrett testified Respondent drafted a HUD statement indicating a refinancing transaction, yet the transaction was clearly a purchase transaction. Syrett testified that Respondent prepared an incorrect HUD statement and an incorrect deed. Syrett instructed his client not to sign either document, and he subsequently redrafted the documents correctly.

In addition to witness testimony, ODC submitted HUD and disbursement statements from twelve other real estate closings, all of which contained numerous financial discrepancies and inaccuracies. In essence, the files contained HUD statements which did not match the disbursement sheets and did not match the checks drawn on Respondent's trust account. The documents included inaccurate numbers for cash advanced to the borrower, processing fees, and the price of the homes.³

***556** Stallings testified on Respondent's behalf at the hearing. Concerning the Cantey closing, she maintained all the parties were present and had executed the closing documents at a "dry closing" that took place the Friday before October 2.⁴ Stallings also testified as to the Price/Wright matter. She stated Wright arrived at Respondent's office with a man she believed to be Amos Price, she made copies of the driver's license that he

presented to her, which indicated he was Amos Price, and she recognized the man as Amos Price from the October 2 closing. Stallings testified Wright did not bring in pre-signed documents because "[Wright] know[s] we wouldn't do that." She further testified that she witnessed the man sign "Amos Price" on the documents.

Finally, Respondent testified. He admitted he neglected Longwood's case in failing to file her claim within the statute of limitations. However, he claimed he drafted pleadings in February 2001, but Longwood refused to come to his office to review them. He indicated the reason he knowingly filed the claim outside the statute of limitations was because he thought he may be able to obtain a settlement offer from the insurance company.

Respondent admitted he was in Myrtle Beach on October 2 and acknowledged that the closing could not possibly have occurred on that date. Respondent testified that, although he could not recall what exactly transpired, "the only thing [he] can think of" was that a dry closing took place the Friday before in which the parties executed the documents.⁵

Regarding the Price/Wright closing, Respondent insisted that Wright brought in a man who purported to be Amos Price. Respondent testified that Wright told him Price was his grandfather and that Price intended to purchase the home for Wright's use. He ****627** too asserted that he recognized Price *557 from the Cantey closing and that the man brought in a driver's license indicating he was Amos Price. Respondent could not offer an explanation as to why Wright "lied" to the Panel in saying he brought pre-signed documents to the closing. On cross-examination, Respondent admitted he was "shocked" that Amos Price was approved for a loan for \$340,000 for the Spring Valley home after co-signing on Cantey's loan just a month earlier. Similarly, at oral argument, Respondent acknowledged that he was concerned with the nature of this transaction from an economic standpoint.

The Panel found that Respondent's actions in failing to file suit on behalf of Longwood within the statute of limitations and in suing Sumter against Longwood's instructions constituted misconduct. Regarding the Cantey closing, the Panel found clear and convincing evidence that Respondent allowed a non-lawyer to conduct a real estate closing, to sign his name to the HUD document, and to notarize a document bearing his signature that falsely reflected that he was present on October 2. As to the Price/Wright matter, the

Panel noted that this matter was most troubling to the Panel and that it was a question of credibility. The Panel found by clear and convincing evidence that Wright committed fraud by forging the closing documents and obtaining a loan in Price's name and found that Price was not present at the closing. The Panel ruled that by allowing criminal activity to occur in his office, Respondent violated the Rules of Professional Conduct. Finally, regarding the thirteen closings containing inaccurate HUD and disbursement statements, the Panel noted that although there were no allegations of misappropriation of funds, the transactions did implicate Respondent's trust account and found that Respondent's actions in this matter constituted misconduct.

III.

[1] [2] This Court has the sole authority to discipline attorneys and to decide the appropriate sanction after a thorough review of the record. *In re Thompson*, 343 S.C. 1, 10, 539 S.E.2d 396, 401 (2000). We "may accept, reject, or modify in whole or in part the findings, conclusions and recommendations of the [Panel]." Rule 27(e)(2), Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR. While this Court may *558 draw its own conclusions and make its own findings of fact in an attorney disciplinary matter, the unanimous findings and conclusions of the Panel are entitled to much respect and consideration. *In re Thompson*, 343 S.C. at 11, 539 S.E.2d at 401. ODC carries the burden of proof and must prove misconduct by clear and convincing evidence. Rule 8, Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR.

IV.

Respondent challenges the Panel's findings as to all four matters. Specifically, Respondent claims there was not clear and convincing evidence to support the allegations in the Price/Wright matter, there was no testimony contradicting his version of the Cantey closing, and the Panel's report contains no allegations of misconduct in the thirteen real estate closings. While he admits he violated Rule 1.3 (diligence) of the Rules of Professional Conduct, Rule 407, SCACR, in the Longwood matter, he claims the Panel's further findings of misconduct related to this matter are not supported by clear and convincing evidence and the proper

sanction is an admonition.

[3] We find that Respondent's actions in the Longwood matter violated the rules on conflicts of interest as well as the rules on competence and diligence. Longwood and Sumter made a full disclosure to Respondent regarding the accident. Respondent should have informed Sumter and Longwood of the potential conflict of interest before he agreed to represent both of them. Respondent clearly neglected this matter by filing Longwood's suit after the statute of limitations had expired and by filing it against Sumter in direct contravention to Longwood's instructions. We give no credence to Respondent's assertion that Longwood refused to come to his office to review the pleadings, for it was Respondent's responsibility to ensure that his client review the pleadings before the eve of the expiration of the statute of limitations.

**628 [4] Next, we find that Respondent violated the Rules of Professional Conduct in the Cantey closing. We agree with the Panel's findings that Respondent allowed a non-lawyer to conduct a real estate closing and sign his name to a HUD statement. We find that Respondent's and Stallings' assertion *559 regarding a prior "dry closing" lacks credibility. Neither Respondent nor Stallings mentioned a dry closing in their testimony at the Notice to Appear hearing. Cantey unequivocally testified that she went to Respondent's office only one time, Respondent was not present, and there had been no dry closing. Regardless of any purported dry closing, Respondent allowed Stallings to notarize a document indicating that Respondent was present on October 2, when in fact, he was not.

[5] In our view, the Price/Wright matter is extremely troubling and is the most serious of the allegations. As stated above, we find Cantey's testimony that Respondent was not present at her closing is credible. Thus, Respondent would likely not be in a position to identify Amos Price. Moreover, one could reasonably question why Wright would provide false testimony, before the Panel and at his guilty plea, by asserting that he brought pre-signed documents to the closing. In both proceedings, Wright's testimony was consistent, and he openly admitted his actions. Wright did not shift blame or implicate anyone but himself and consistently maintained that neither Respondent nor Stallings was involved in or aware of his fraudulent scheme to assume Amos Price's identity.⁶ In our view, Stallings' and Respondent's version of events is problematic, yet we must examine the evidence through the lens of the clear

and convincing standard.

****629 V.**

Applying this heightened standard, we find that ODC did not meet its burden of proving the allegation that Respondent actively participated in this fraudulent scheme. Neither Respondent nor Stallings was ever indicted for any offense arising out of this matter, and the only evidence ODC presented in support of this allegation was Wright's testimony. In our view, this does not rise to a level of clear and convincing evidence that Respondent was an active participant in the fraud and forgeries. While we do not overlook or disregard the undisputed fact that serious criminal conduct occurred in Respondent's office, we do not find that ODC established Respondent's knowing participation in the fraudulent scheme. *560 We view Respondent's conduct in line with his general slack and casual approach to real estate closings, perhaps explaining Wright's choice of Respondent as the closing attorney for his fraudulent scheme.

^[6] Finally, we agree with the Panel's finding that the numerous inaccurate closing documents reflect Respondent's loose approach in the handling of real estate closings. The HUD statements and disbursement sheets reflected incorrect, inaccurate, and sometimes missing important information. This court takes real estate transactions very seriously, and we have consistently issued harsh sanctions against attorneys who do not conduct closings in accordance with proper procedures. *See In re Moore*, 382 S.C. 610, 677 S.E.2d 598 (2009) (suspending attorney for one year for failing to follow proper procedures in real estate closings); *In re Hall*, 370 S.C. 496, 636 S.E.2d 621 (2006) (imposing a nine-month suspension where lawyer served as the senior South Carolina attorney for a national title agency company that conducted closing which did not follow proper closing procedures). Moreover, not only did Respondent's files indicate failure to follow proper closing procedures, they also reflected failure to properly maintain his trust account. In our view, this evidence establishes a consistent pattern of negligence, inattention, failure to supervise, and an overall cavalier attitude and approach to real estate transactions, his client's interests, and the practice of law.

We recognize that this disciplinary matter was highly contentious. We commend the Panel for conducting a thorough hearing and completing a careful assessment in making their fact-finding determinations.

By his misconduct in the Longwood matter, we find Respondent violated the following Rules of Professional Conduct, Rule 407, SCACR: 1.1 (competence); 1.2 (scope of representation); 1.3 (diligence); 1.7 (lawyer shall not represent a client if representation is adverse to another client's interests unless both clients consent); and 1.9 (lawyer owes a duty of loyalty to former clients). As to the Cantey closing, we find Respondent violated the following Rules of Professional Conduct Rule 407, SCACR: 1.1 (competence); 1.3 (diligence); 5.3 (addressing *561 responsibilities for non-lawyer assistants); 5.5 (lawyer shall not assist another in the unauthorized practice of law); and 8.4(a) and (e) (lawyer shall not violate the Rules of Professional Conduct or engage in conduct that is prejudicial to the administration of justice). Lastly, regarding the thirteen real estate closings containing inaccurate closing documents, we find Respondent violated the following Rules of Professional Conduct, Rule 407, SCACR: 1.1 (competence); 1.3 (diligence); 4.1(a) (lawyer shall not make a false statement of material fact to third persons); 5.3 (addressing responsibilities for non-lawyer assistants); and 8.4(a) (lawyer shall not violate Rules of Professional Conduct).

^[7] As to mitigating factors, we have considered the fact that Respondent was admitted to the South Carolina Bar in 1985 and has no prior disciplinary history. Additionally, as noted above, Respondent was not indicted as a result of the Price/Wright matter.

^[8] We hold that a sanction of a one year definite suspension is warranted in light of Respondent's misconduct, especially his neglect in supervising real estate transactions. In issuing this sanction, we especially considered the fact that serious criminal conduct was so easily perpetrated in his office while under his watch and control. *See In re Johnson*, 375 S.C. 499, 654 S.E.2d 272 (2007) (issuing a definite suspension of one year where attorney unknowingly assisted others in perpetrating real estate fraud by failing to adequately investigate the facts surrounding the circumstances of the loans); *In re Helton*, 372 S.C. 245, 642 S.E.2d 573 (2007) (indefinitely suspending a lawyer who allowed closings to be conducted by his non-lawyer assistants, was not present when the closing documents were executed, improperly witnessed documents, and failed to review the closing documents).

Respondent has exhibited a pattern of a careless approach to real estate closings. Accordingly, we

suspend Respondent for one year effective the date of this opinion and direct Respondent to pay the costs of these proceedings. We further order Respondent to participate in the LEAP program.

DEFINITE SUSPENSION.

TOAL, C.J., WALLER, PLEICONES, BEATTY and KITTREDGE, JJ., concur.

Parallel Citations

689 S.E.2d 623

Footnotes

- 1 Respondent attempted to serve Sumter, but the pleadings were returned for non-service.
- 2 Amos Price was deceased by the time this hearing was held.
- 3 The amount of the inaccuracies ranged from hundreds to thousands of dollars. Wright acted as the mortgage broker in several of these closings.
- 4 According to Respondent, a “dry closing” is a closing where the documents are executed, but funds are not exchanged and the property is not transferred until days later. On cross-examination, ODC pointed out that Stallings never mentioned a dry closing in her testimony at the Notice to Appear hearing.
- 5 Similar to Stallings’ testimony, ODC pointed out that Respondent also never mentioned a dry closing in his testimony at the Notice to Appear hearing.
- 6 We do not intend to commend Wright for his actions or to excuse his criminal conduct. We are examining and analyzing Wright’s testimony solely for the purpose of ascertaining how a criminal was able to perpetrate serious mortgage fraud involving identity theft in a lawyer’s office.

256260

State of South Carolina

In the Court of Common Pleas

County of Richland

Civil Action No. 03-CP-40-3665

Homeowners Mortgage Enterprises, Inc.,

Plaintiff

vs.

CONSENT JUDGMENT

Joseph Wright, Jr., Glenda Wright, and
Wrightway Mortgage Corporation,

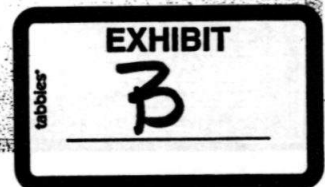
Defendants.

01 SEP 22 PM 12:35

This matter came for trial during the September 5, 2004, term of court in Richland County, South Carolina. At the call of the case for trial the Defendants stipulated to the following facts and consented to the entry of judgment against them, jointly and severally, as follows:

1. When this suit was filed, Joseph Wright Jr. ("Wright") and Glenda Wright were husband and wife and were residents of Richland County, South Carolina. They resided at 2018 Riding Ridge Road, Columbia, SC, 29223 from November 29, 2001, until March 4, 2004.
2. Wrightway Mortgage Corporation is a South Carolina corporation owned and controlled solely by Wright.
3. At all relevant times, Wrightway Mortgage and Wright knew that the Plaintiff was a mortgage lender; they knew that the Plaintiff had a number of loan purchase agreements with various mortgage lenders across the country, one of which was Countrywide Home Loans, Inc. ("Countrywide"); and they knew that those agreements required the Plaintiff to repurchase loans that contained certain misrepresentations.

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4. In November 2001, Joseph Wright and Wrightway Mortgage presented (either directly or through an intermediary) a loan application, contract of sale, and related paperwork to the Plaintiff for a loan to be secured by the real property at 2018 Riding Ridge Road, Columbia, SC 29223.

5. Wrightway Mortgage had entered into a broker agreement (the "Broker Agreement") with the Plaintiff on January 26, 2001.

6. The loan application, contract of sale, and related paperwork indicated that the purchaser was to be one Amos Price.

7. In fact, Amos Price never intended to purchase the real property at 2018 Riding Ridge Road, has never lived there, and has never intended to live there.

8. Thereafter, Wright and Wrightway Mortgage submitted other paperwork to Charles Johnson, Esq., an attorney practicing law in Columbia, South Carolina, whereby they represented that Amos Price was the person who was applying for the loan.

9. In reliance on the loan application and other paperwork presented by Wright and Wrightway Mortgage to Attorney Johnson, the Plaintiff delivered to Attorney Johnson a check in the amount of \$301,695.88 for Johnson to disburse during the closing.

10. By submitting the loan to the Plaintiff, Wrightway Mortgage breached the agreement.

11. In reliance on the representations made by Wright and Wrightway Mortgage, the Plaintiff sold the loan to Countrywide.

12. Upon discovery of the problems with the loan, Countrywide demanded that the Plaintiff repurchase the loan for the sum of \$322,084.68. The Plaintiff retained counsel and investigated the matter.

APR 02 2014

13. Because the paperwork submitted was false, the Plaintiff was forced to expend time and money (including attorney's fees) investigating this case, and the Plaintiff was forced to pay to Countrywide the sum of \$127,495.61 on August 30, 2002, in satisfaction of the Plaintiff's obligations to Countrywide.

14. After investigation and analysis, the Plaintiff exercised its right under the Broker Agreement to mitigate its losses by entering into an agreement with Countrywide under which the Plaintiff paid to Countrywide the sum of \$127,495.61 on August 30, 2002, in exchange for a complete release of the Plaintiff's obligations to Countrywide. The payment of this sum was directly and proximately caused by the wrongful actions of Wright and Wrightway Mortgage.

15. In addition, and as a direct and proximate result, the Plaintiff incurred reasonable attorney's fees of over \$23,000.

16. The Defendants recognize and stipulate that the Plaintiff is entitled to judgment against them jointly and severally for actual damages of \$150,495.61 (the release amount plus attorney's fees of \$23,000).

17. Furthermore, the Plaintiff conferred a benefit upon the Wrights in the form of a home in which they have lived from November 11, 2001, until May 1, 2004, without making a payment.

18. The Wrights realized the benefit conferred by the Plaintiff and retained it under circumstances that make it inequitable for them to have retained it without paying its value.

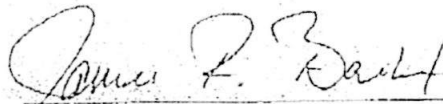
19. The Defendants acknowledge that had the Plaintiff gone forward with its lawsuit against them as it had the right to do, then the Plaintiff would have presented evidence that it incurred the damages stated above, and it would also have a claim for other sums, including interest and

costs. The sum stated represents the compromise of this claim, and the sum is justly due. The basis of liability is as stated above.

NOW, THEREFORE, on motion of the Plaintiff and with the consent of the Defendants, it is hereby

ORDERED that the Plaintiff shall have judgment against Joseph Wright, Jr., Glenda Wright, and Wrightway Mortgage, jointly and severally, for actual damages of \$150,495.61 (the release amount plus attorney's fees of \$23,000).

AND IT IS SO ORDERED.



Presiding Judge
Fifth Judicial Circuit

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. M. Bacht
C.C.P. & G.S. 1947
RICHLAND COUNTY
SOUTH CAROLINA

Columbia, South Carolina

September 13, 2004.

APR 02 2014

Consents on Next Page

State of South Carolina

COURT OF GENERAL SESSIONS

County of Richland

State of South Carolina,

Plaintiff,

vs.

Joseph Wright,

Defendant.

ORDER OF RESTITUTION

03-GS-40-5502

03-GS-40-5503

03-GS-40-5504

FILED
07 JUL 18 AM 8:49
JAMES H. SCOTT
S.C.C. & G.S.

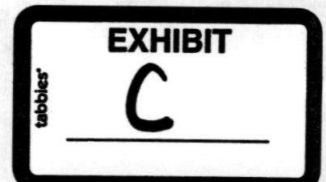
This matter previously came before this Court on January 10, 2005, for a hearing on the following indictments:

Count One: That on or about November 29, 2001, Defendant Wright, with intent to defraud, falsely make, forge and/or counterfeit, did fraudulently represent himself to be one Amos Price for the purpose of obtaining a \$340,000 mortgage loan for the purchase of property located at 2018 Riding Ridge Road in Columbia.

Count Two: That Defendant Wright did cheat and defraud Homeowners Mortgage Enterprises, Inc. ("Homeowners") by fraudulently representing himself as one Amos Price by using Mr. Price's personal information to obtain a loan for the purchase of the above referenced house.

Count Three: That Defendant Wright, without authorization or permission of Mr. Amos Price and with the intent of unlawfully appropriating the financial resources of Mr. Amos Price for his own use, did execute a \$340,000 mortgage scheme by fraudulently using Mr. Price's personal information, i.e., date of birth, social security number and credit report.

Order of Restitution
03-GS-40-5502, 03-GS-40-5503 and 03-GS-40-5504
Page 1 of 6



Defendant Wright pled guilty to all counts and was sentenced by the Court as follows:

- 1) to make restitution, pursuant to SC Code §17-25-322(A), to Mr. Amos Price in the amount of \$5,000 (which restitution has been made as of the writing of this order);
- 2) to make restitution to Homeowners Mortgage Enterprises, Inc. ("Homeowners"), pursuant to SC Code §17-25-322(A), in the amount of \$45,000.00 on or before ninety (90) days from the date of the hearing (which restitution has been made as of the writing of this order);
- 3) to appear at the ~~Alvin S. Glenn Detention Center within ninety (90) days of the~~ date of the hearing to serve a sixty (60) day sentence;
- 4) to be placed on probation for five years to begin at the conclusion of his sixty (60) day sentence, during which time he would be required to make any remaining restitution due Homeowners.

IT APPEARING that the parties have reached an agreement as to the remaining restitution due Homeowners, and the Court approves of the settlement and incorporates it as an order of this Court.

NOW, THEREFORE, upon motion of the parties,

IT IS ORDERED that:

- 1) The Court, at the request of Homeowners, does hereby waive Defendant Wright's sixty (60) day incarceration at the Alvin S. Glenn Detention Center so that Defendant Wright may remain gainfully employed in order to make restitution as set out herein;
- 2) Defendant Wright's five (5) year probationary period will begin July 1, 2007, and end on July 1, 2012;



3) ~~The total remaining restitution due to Homeowners from Defendant Wright is the~~
sum of \$100,000.00;


4) An initial installment of \$25,000.00 will be paid on or before June 10, 2007;

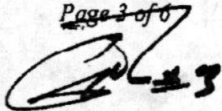
5) The remaining balance of restitution (\$75,000.00), together with the court required collection fee of 20% pursuant to SC Code §17-25-322(C), for a total of \$90,000, will be paid over the course of four (4) years (which is 80% of Defendant Wright's probation) at the rate of \$1875.00 per month, made payable to the Court, beginning July 1, 2007; and

4) Pursuant to SC Code §17-25-323(B), should Defendant Wright default in the restitution payments set forth herein, Homeowners, the Attorney General, the solicitor, and/or an agent of the Department of Probation and Parole may move the court for a hearing to show cause why Defendant Wright's default should not be treated as a civil judgment or for a determination by the Court of any further remedy due.

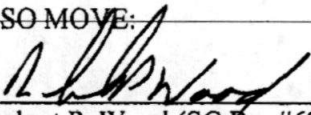
AND IT IS SO ORDERED.

Columbia, South Carolina
July 10, 2007


James W. Johnson, Jr. G. THOMAS COOPER, JR.
Judge, Fifth Judicial Circuit
CHIEF ADMINISTRATIVE SERVICES
GENERAL SERVICES



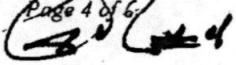
ISO MOVE:


Robert P. Wood (SC Bar #6206)
Rogers Townsend & Thomas, PC
220 Executive Center Drive, Suite 109
Post Office Box 100200 (29202)
Columbia, SC 29210
(803) 771-7900

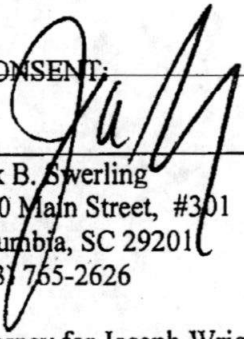
Attorney for Homeowners Mortgage
Enterprises, Inc.

Order of Restitution
03-GS-40-5502, 03-GS-40-5503 and 03-GS-40-5504

Page 4 of 6



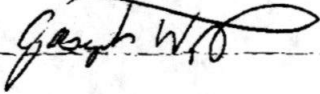
I CONSENT:



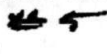
Jack B. Swerling
1720 Main Street, #301
Columbia, SC 29201
(803) 765-2626

Attorney for Joseph Wright

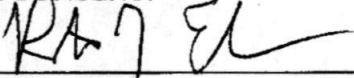
Dated: _____



Joseph Wright

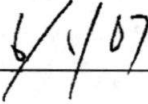


I CONSENT:



Robert J. Elam, Asst. Solicitor
Richland County Solicitor's Office
1701 Main Street, 3rd Floor
Columbia, SC 29201

Dated:



Order of Restitution

03-GS-40-5502, 03-GS-40-5503 and 03-GS-40-5504

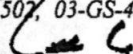
Page 6 of 8 

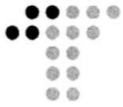
TABLE OF PAYMENTS¹
 State of South Carolina vs. Joseph Wright
 Our file # 10869-1

BALANCE OWED AS OF 5/15/09		\$82,367.00
5/18/09 Trust Account Check #2445 from Jack Swerling	\$5,000.00	\$77,367.00
5/29/09 Rcvd. Restitution payment from court #130225261 sent directly to Homeowners (this reps a small payment made by Wright directly to the court some time ago and does not affect the current pay schedule he is under, per Jackie Wright of Victim's Services).	\$83.34	
5/29/09 Trust Account Check #2446 from Jack Swerling	\$1,875.00	\$75,492.00
7/1/09 Trust Account Check #2454 from Jack Swerling	\$1,875.00	\$73,617.00
8/3/09 Trust Account Check #2462 from Jack Swerling	\$1,875.00	\$71,742.00
9/1/09 Trust Account Check #2468 from Jack Swerling	\$1,875.00	\$69,867.00
10/1/09 Trust Account Check #2476 from Jack Swerling	\$1,880.00	\$67,987.00
10/30/09 Trust Account Check #2484 from Jack Swerling	\$1875.00	\$66,112.00
12-2-09 Trust Account Check #2506 from Jack Swerling	\$1880.00	\$64,232.00
1/5/10 Trust Account Check #2516 from Jack Swerling	\$1,900.00	\$62,332.00
2/1/10 Trust Account Check #2521 from Jack Swerling	\$1,880.00	\$60,452.00
3/2/10 Trust Account Check #2534 from Jack Swerling	\$1,875.00	\$58,577.00
4/15/10 Trust Account Check #2546 from Jack Swerling	\$1,900.00	\$56,677.00
5/10/10 BB&T check #5002079675	\$1,875.00	\$54,802.00
6/18/10 Safe FCU check # WE DO NOT HAVE A COPY OF THIS CHECK	\$1,000.00	\$53,802.00
7/16/10 ArrowPionte FCU check #20004698 constituting balance of June payment)	\$875.00	\$52,927.00
7/26/10 Safe FCU check #518954	\$1,875.00	\$51,052.00
8/23/10 Safe FCU check #519280	\$1,875.00	\$49,177.00
10/1/10 BB&T Check # 5002665679 (constitutes September's payment)	\$1,875.00	\$47,302.00

¹ \$5,000 due 5/15/09 with monthly installments of \$1875.00 due on the first of every month until paid



1/14/11 BB&T Check #5002128523 (constitutes October and November's payments)	\$3,750.00	\$43,552.00
--	------------	-------------



ROGERS TOWNSEND & THOMAS, PC
ATTORNEYS AND COUNSELORS AT LAW

220 Executive Center Drive
Columbia, SC 29210

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Harriet Pollitt Wallace
Direct: 803-744-1846
hwallace@rtt-law.com

Robert P. Wood
Direct: 803-744-1275
wood@rtt-law.com
Also admitted in US Virgin Islands

OFFICES IN:

Charlotte, NC

Charleston, SC

St. Thomas
U S Virgin Islands

March 14, 2011

Agent Richard Weiss
Probation and Parole Board
Post Office Box 397
Lancaster, SC 29721

RE: State of South Carolina v. Joseph Wright
Case Nos.: 03-GS-40-5502; 03-GS-40-5503; and 03-GS-40-5504
Our File No. 010869-00001

Dear Agent Weiss:

By order entered July 18, 2007, the court ordered Joseph Wright to pay restitution to Homeowner's Mortgage Enterprises, Inc. in the amount of \$1,875.00 per month until the sum of \$100,000 is paid. Each payment is due on the first of the month.

Mr. Wright has failed to make the required monthly payments. On January 14, 2011 Mr. Wright paid \$3,750.00, which constituted the payments for October and November. He has not made a payment since that time and now owes payment for the months of December 2010, January, February and March 2011.

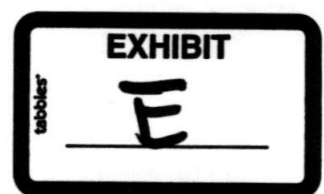
We respectfully request a probation hearing.

If you need any further information, please do not hesitate to contact me. I look forward to hearing from you.

Sincerely,

Robert P. Wood
Attorney for Homeowner's Mortgage
Enterprises, Inc.

RPW/mdw



Joseph wright hearing

1

1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF RICHLAND
4 2003-GS-40-5502 to 5504
5
6 State of South Carolina
7 vs.
8 Joseph Wright
9
10
11 Lancaster, South Carolina
12 September 6, 2013
13 Before the Honorable Brian Gibbons
14

15 APPEARANCES
16 For Probation: Agent Lynn Oliver
17 For the Defendant: Harrison Saunders
18 For Homeowners Enterprise, Inc.: Robert P. Wood
19 Reported by: Michael C. Watkins
20 Official Court Reporter
21
22
23
24
25

♀

2

1 THE COURT: All right. Yes, ma'am?
2 AGENT BOYD: Your Honor, you have before you Joseph
3 Wright on indictments number 2003-40 for Richland County



Joseph Wright hearing

4 5503, 5504 and 5502 for forgery value \$5,000 or more,
5 obtaining signatures and property under false pretenses
6 \$5,000 or more and financial identity fraud. His probation
7 began actually July 9th of 2008, had an expiration date of
8 July 8th of 2013. He was sentenced by the Honorable
9 Reginald Lloyd in Richland County, sentence was ten years
10 suspended upon the service of 60 days and five years
11 probation for each indictment. The indictment was later
12 amended in July of 2007 and stipulates that \$45,000 had
13 already been paid to Homeowners Mortgage Enterprise, and
14 \$5,000 had been paid to Mr. Amos Price. It was ordered on
15 the same date at the request of Homeowners that Mr. Wright
16 be sentenced to a 60 day incarceration at Alvin S. Glenn
17 Detention Center and was waived so that Defendant Wright
18 could remain gainfully employed in order to make restitution
19 as set out herein. That five year probationary period would
20 begin on July 1st of 2007 and end on July 1st of 2012, the
21 total remaining restitution due to Homeowners -- the total
22 remaining restitution due to Homeowners from Defendant
23 Wright was the sum of \$100,000. An installment of \$25,000
24 was to be paid on or before June 10th of 2007, the remaining
25 balance of restitution \$75,000 together with the court

‡

3

1 required fee of 20 percent pursuant to South Carolina Code
2 17-25-322C for a total of \$90,000 would be paid over the
3 course of four years which required 80 percent of Defendant
4 Wright's probation at the rate of \$1,875 per month.

5 THE COURT: All of his fees to y'all have been paid?

6 AGENT BOYD: Your Honor, at the time that the process
7 was issued we were still showing outstanding sur-charges for
8 the Richland County Clerk of Court.

Joseph wright hearing

9 THE COURT: All right. I see there's several lawyers
10 standing in front of me now so apparently there has been a
11 deal reached was the best way to put it, is that correct,
12 Mr. Saunders?

13 MR. SAUNDERS: That is correct, Your Honor, Harrison
14 Saunders here for Joseph Wright. That is correct, Your
15 Honor, and we have it -- I think I'll let Mr. Wood explain
16 the deal, Your Honor, and see if you would accept that. I
17 think he's a little clearer on it and probably would present
18 it better than me.

19 THE COURT: Does the deal as presented get probation
20 out of the picture?

21 MR. SAUNDERS: Yes, sir.

22 THE COURT: Because y'all want to terminate the
23 probation, he has been on it for more than five years now.

24 AGENT BOYD: Yes, sir.

25 MR. SAUNDERS: Yes, sir, it does.

4

1 THE COURT: Mr. Wood, let me hear from you then and we
2 will see what we're going to do.

3 MR. WOOD: Thank you, Your Honor. My name is Robert P.
4 Wood, I go by Bob Wood, I represent Homeowners Enterprises,
5 Inc. We have reached a deal whereby today probation will be
6 deemed over, ended whether it's Richland County or Lancaster
7 or wherever it may be for Mr. Wright. Also today Mr. Wright
8 will confess today to being guilty of willful civil contempt
9 for not having made his payments, however -- and he would
10 agree to serve six months in jail for that contempt. He can
11 purge himself of that contempt, however, if he will pay my
12 client through my office, Rogers, Townsend and Thomas, the
13 sum of \$5,000 on or before October 1st of 2013. Thereafter

Joseph Wright hearing

14 as long as he pays \$1,500 a month we will not try to enforce
15 the civil contempt until he has paid my law firm the sum of
16 \$38,500, that sum of money being the sum that starts today
17 or moving forward. If however he misses any of these
18 payments we will have --

19 THE COURT: And the payments are due on what day each
20 month?

21 MR. WOOD: The 5th day of each month.

22 THE COURT: Commencing?

23 MR. WOOD: October 1.

24 THE COURT: So October 1 you're going to get 6,500.

25 MR. WOOD: No, I'm glad you asked. On October 1 he

5

1 will pay my client through my law firm \$5,000.

2 THE COURT: Got it.

3 MR. WOOD: On November 1 he will pay my office \$1,500.

4 THE COURT: Got it.

5 MR. WOOD: On December 2 -- we had to work this out --
6 on December 2 he will pay my office \$1,500. On January 6th
7 he will pay my office \$1,500 and thereafter starting
8 February 5 he will pay my office \$1,500 a month until he has
9 paid my office, my client the total sum of \$38,500 starting
10 with this payment that's due.

11 THE COURT: Prepay without penalty?

12 MR. WOOD: That's right. And Your Honor, we are
13 working out a different deal but we couldn't get it done
14 today and if we do reach this different deal it would not
15 require Court approval. And what that is is if he does this
16 other deal then I would simply agree not to file a motion to
17 have him put in jail but I don't think you need to know
18 about that. So the ball would be in my court to ask this

Joseph Wright hearing

19 Court to put him in jail if he misses one of these payments.
20 Also if he makes all of these payments then my office, my
21 client will satisfy this big judgment that we have against
22 Mr. Wright, I think it's for roughly \$150,000, but we will
23 satisfy all judgments we have against Mr. Wright, we will
24 give him a release, we will agree not to prosecute him for
25 any crimes, the whole case will be totally over if he meets

6

1 all of these payments on time as he is agreeing here this
2 morning. And that is our deal, Your Honor.

3 THE COURT: Mr. Saunders, is that your understanding of
4 the agreement?

5 MR. SAUNDERS: That's right, Your Honor. And I was
6 talking to my client and I didn't hear the very end of that
7 but I believe Mr. Wood said all judgments would be
8 released --

9 THE COURT: All judgments satisfied, released,
10 everything will be over with upon the payment of 38-5 per
11 the terms he just stated, plus the five initially up front.

12 MR. WOOD: well, no, the 38-5 includes that five that
13 he pays up front.

14 THE COURT: So a total of 38-5.

15 MR. WOOD: That's right.

16 THE COURT: Not 43-5.

17 MR. WOOD: Right. The 43-5 is really what he owes
18 according to probation and part of the deal, the sweetener,
19 is we would drop that last \$5,000 if he meets these terms.

20 THE COURT: Okay. I've got it. All right. And Mr.
21 Wright, if you will raise your right hand for me.

22 (The defendant was sworn.)

23 THE COURT: And I need you to answer out loud so my

24 court reporter can pick up your testimony. First of all
25 have you heard what Mr. wood and your lawyer stated into the

7

1 record?

2 THE DEFENDANT: Yes, I have.

3 THE COURT: Do you understand the agreement?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Has anybody forced, pressured, coerced or
6 made you enter into this agreement against your will?

7 THE DEFENDANT: No.

8 THE COURT: Are you today under the influence of
9 alcohol, drugs or any other mind alternating substance?

10 THE DEFENDANT: No.

11 THE COURT: Do you understand this agreement?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that one of the terms, in
14 fact, the very important term of this agreement being that
15 you are admitting that you have willfully violated the terms
16 of any repayment you were supposed to do to get this debt
17 off of you. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Is that true?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that once I adjudicate or
22 find that you are in civil contempt of court you could be
23 sentenced up to six months in jail for civil contempt
24 without a jury trial. If you have a jury trial then you're
25 looking at it could be five years or so, do you understand

8

1 that?

2 THE DEFENDANT: Yes, sir.
Page 6

Joseph wright hearing

3 THE COURT: All right. But the terms of this agreement
4 say that you're admitting that you're in civil contempt of
5 court and you're agreeing that if you don't pay as stated in
6 this agreement you're looking at six months in jail for your
7 contempt, do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you have the ability to make these
10 payments?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And I find that he has the ability to make
13 these payments. Now, you understand what happens if you
14 don't make these payments?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: What happens?

17 THE DEFENDANT: Six months in jail.

18 THE COURT: Right. Are you satisfied with your lawyer?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Has he answered all of your questions?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you believe that under the circumstances
23 this a fair resolution to this situation?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you asking me to approve this

1 agreement?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Is this what you want me to do?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Mr. Saunders, any other questions for your
6 client?

7 MR. SAUNDERS: Your Honor, I do not believe so.

Joseph Wright hearing

8 Actually we talked in one of the rooms outside of the
9 courtroom, all three of us, Mr. Woods, Mr. Wright and myself
10 went over this particular agreement and the contingent
11 agreement that Mr. Wood referenced and I believe he
12 understands everything and I believe this is a fair
13 arrangement.

14 THE COURT: All right.

15 MR. SAUNDERS: So we would ask you to accept it.

16 THE COURT: All right. Mr. Wood, do you agree?

17 MR. WOOD: Yes, sir. I do want to make sure, though,
18 that I'm going to prepare an order whereby the Court will
19 today find that Mr. Wright is in willful civil contempt of
20 court and is sentenced to six months.

21 THE COURT: I'm fixin' to do that.

22 MR. WOOD: I just want to make sure we're straight
23 about that.

24 THE COURT: That's why I had to ask them those
25 questions. Anything else from probation's standpoint?

10

1 AGENT BOYD: No, sir Your Honor.

2 THE COURT: The terms of this agreement then would be
3 taking it off your rolls and that is the good thing for
4 probation. And you understand that then, sir, you won't be
5 on probation anymore, that's going to be done, be over with
6 so that's a big lick for you. The big lick for them, of
7 course, is they're getting their money back. And, of
8 course, you understand that I'm going to find based upon my
9 questioning of you that you have not paid this money when up
10 to this point you had the ability to do so so therefore I am
11 going to make a finding of contempt against you, do you
12 understand that?

Joseph Wright hearing

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And you agree with that finding of
15 contempt?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Therefore it is ordered. I
18 find that Mr. Wright is in willful civil contempt of the
19 previous restitution orders ordering that he pay the
20 restitution in full. I find that the total amount that he
21 is behind is \$38,500 comprised by the agreement of the
22 parties. I therefore sentence him to six months in the
23 Lancaster County Detention Center, however he may purge
24 himself of that sentence if he abides by the agreed upon
25 terms previously stated into the record. That order will be

11

1 prepared by Mr. Wood. Mr. Saunders, I'll ask that you sign
2 off on that order as well when it comes in so it will be a
3 consent order and I also want your client to sign it if you
4 can get him in the office to sign it as well before it comes
5 to me for my signature.

6 MR. SAUNDERS: Yes, sir.

7 MR. WOOD: Your Honor, because the \$5,000 comes off the
8 back end, I think I do want the Court to find that he owes
9 the \$43,500.

10 THE COURT: The sentence of the Court -- or the finding
11 of the Court is that the total amount is the 43-5, however I
12 find that your client, Mr. Wood, has agreed to take 38-5 in
13 exchange for this settlement today.

14 MR. WOOD: That's exactly right.

15 (End of the hearing.)

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Joseph wright hearing

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1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of the proceedings had and
5 evidence introduced in the trial of the captioned case,
6 relative to appeal, in the Court of General Sessions for
7 Lancaster County, South Carolina, on the 6th day of
8 September, 2013.

9 I do further certify that I am neither of kin, counsel,
10 nor interest to any party hereto.

11

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October 25, 2013

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Michael C. Watkins
Court Reporter

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Joseph Wright hearing

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Nancy Thomas

From: Robert P. Wood
Sent: Tuesday, September 24, 2013 1:36 PM
To: Harrison Saunders (harrison@hsaunderslaw.com)
Subject: Wright Proposed Order
Attachments: 9644763_1.DOCX.docx

Harrison: I removed this language from the proposed order:

Until timely completion of the schedule selected by Mr. Wright, however, Homeowners Mortgage may renew its judgments as it sees fit, and transcribe them to whatever counties it sees fit (but shall not execute on them until Mr. Wright's default on his selected schedule).

Having said that,

- a) Homeowners has the right to renew the judgments and to transcribe the judgment(s) to whatever counties it desires at any time, and we intend to do that; and
- b) Homeowners will not execute on the judgments as long as Mr. Wright complies with the payment schedule.

Just wanted to make sure we are on the same page about that.

Bob



STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF GENERAL SESSIONS
2003-GS-40-5502
PROBATION C/W #S C-29-13-0025

STATE OF SOUTH CAROLINA

v.

ORDER

JOSEPH WRIGHT, JR.

This matter came before the court for a probation violation hearing. In attendance were Teresa H. Oliver (Agent in Charge for the South Carolina Department of Probation, Parole, and Pardon Services, Joseph Wright, Jr. (individually), Harrison Saunders, Esq. (attorney for Mr. Wright), and Robert P. Wood (attorney for Homeowners Mortgage Enterprises, Inc. (the victim)).

At the hearing and under oath, Mr. Wright admitted he was in willful civil contempt of previous orders in this case requiring him to pay Homeowners Mortgage restitution. And the Court finds that Mr. Wright is in fact in willful civil contempt for violating previous restitution orders in this case. The court orders Mr. Wright to serve six months in the Lancaster County Detention Center for his contempt of court. Mr. Wright admits he is within the jurisdiction of this court and that he has been and remains able to pay the restitution ordered by this court.

At the request of Homeowners Mortgage, and with the consent of Mr. Wright and his counsel, and with the approval of the Court, Mr. Wright's period of incarceration shall not commence unless and until Homeowners' Mortgage Enterprises (through the company or through its counsel) has filed with this Court (a) an affidavit averring that Mr. Wright has failed to meet one of the following two payment schedules and (b) a motion and rule to show cause why Mr. Wright should not be incarcerated immediately. The payment schedules are as follows:

Schedule A		
	Date	Payment Due
	October 1, 2013	\$5,000
	November 1, 2013	1,500
	December 2, 2013	1,500
	January 2, 2014	1,500
	February 5, 2014 and the fifth day of each month thereafter until Mr. Wright has paid the sum of \$38,500 after September 6, 2013.	1,500/month

Schedule B		
	Date	Payment Due
	October 1, 2013	\$5,000
	November 1, 2013	1,000
	December 2, 2013	5,000
	January 2, 2014	1,500
	February 5, 2014, and the fifth day of each month thereafter until Mr. Wright has paid the sum of \$36,000 to Homeowners Mortgage after September 6, 2014.	1,500

All payments shall be made to Rogers Townsend & Thomas, PC, and shall be delivered in the care of Sheri McClendon, 220 Executive Center Drive, Columbia, SC 29210.

Mr. Wright shall notify Ms. McClendon in writing at the address above within 30 days of any change of his residence address.

Upon receipt of the amounts due on whichever of the two payment schedules Mr. Wright elects to follow, Homeowners Mortgage shall mark all judgments it has against Mr. Wright fully paid and satisfied.

Rogers Townsend & Thomas, PC is authorized to deal directly with Mr. Wright in person, over the telephone, or in writing (including email) with respect to any payments or his

performance of this agreement. The firm shall copy Mr. Saunders on any written communications with Mr. Wright.

The undersigned shall retain jurisdiction of this case.

Mr. Wright's probation is terminated effective September 6, 2013.

AND IT IS SO ORDERED.

Brian M. Gibbons
Circuit Court Judge

Chester, South Carolina
September __, 2013

WE CONSENT:

Joseph Wright

Address:

Telephone No.:

S. Harrison Saunders VI
1720 Main Street, Ste. 301
Columbia, SC 29201-2850
(803) 779-6333

Robert P. Wood
Rogers Townsend & Thomas, PC
220 Executive Center Drive (29210)
PO Box 100200
Columbia, SC 29202
(803) 771-7900

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF GENERAL SESSIONS
2003-GS-40-5502
PROBATION C/W #S C-29-13-0025

STATE OF SOUTH CAROLINA

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ORDER

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A handwritten signature in black ink, appearing to be "B. J. ...".

2013 NOV 20 AM 11:10
FILED
LANCASTER COUNTY

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Upon receipt of the amounts due on whichever of the two payment schedules Mr. Wright elects to follow, Homeowners Mortgage shall mark all judgments it has against Mr. Wright fully paid and satisfied.

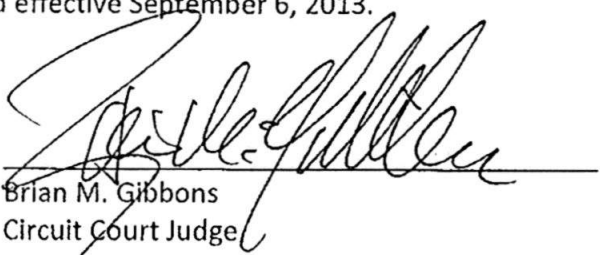
Rogers Townsend & Thomas, PC is authorized to deal directly with Mr. Wright in person, over the telephone, or in writing (including email) with respect to any payments or his

performance of this agreement. The firm shall copy Mr. Saunders on any written communications with Mr. Wright.

The undersigned shall retain jurisdiction of this case.

Mr. Wright's probation is terminated effective September 6, 2013.

AND IT IS SO ORDERED.



Brian M. Gibbons
Circuit Court Judge

Chester, South Carolina
September __, 2013

WE CONSENT:

~~_____
Joseph Wright~~

~~Address: _____

_____~~

~~Telephone No.: _____
_____~~

~~_____
S. Harrison Saunders VI
1720 Main Street, Ste. 301
Columbia, SC 29201-2850
(803) 779-6333~~

~~_____
Robert P. Wood
Rogers Townsend & Thomas, PC
220 Executive Center Drive (29210)
PO Box 100200
Columbia, SC 29202
(803) 771-7900~~

The South Carolina Court of Appeals

The State, Respondent,

v.

Joseph Wright, Jr., Appellant.

Appellate Case No. 2013-002510

ORDER

Appellant has filed a petition for a writ of supersedeas from an order arising from a case in the Court of General Sessions. However, the order on appeal purports to hold the defendant in civil contempt, and thus is a civil matter subject to the stay and supersedeas provisions of Rule 241, SCACR. In part, the order holds the defendant in civil contempt, which is not subject to an automatic stay pending the outcome of an appeal. *See Matter of Decker*, 322 S.C. 212, 214, 471 S.E.2d 459, 461 (1995) (noting an order holding a person in civil contempt is not automatically stayed by the taking of an appeal). However, the order also creates a mechanism by which the court has the power to resolve a civil dispute between Appellant and the victim the Court of General Sessions would not otherwise have. *See* S.C. Code Ann. § 24-21-440 (2007) ("The period of probation or suspension of a sentence shall not exceed a period of five years and shall be determined by the judge of the court and may be continued or extended *within the above limit.*" (emphasis added)). This appeal challenges the validity of the underlying order in this respect. Thus, with regard to the mechanism by which the court has the power to resolve a civil dispute between the parties, the underlying order is automatically stayed. *See* Rule 241(a), SCACR ("As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision."). Because a determination of whether Appellant has violated the underlying order is a "matter affected by the appeal," any proceeding making such a determination is automatically stayed. *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012) (noting the lower court's power to proceed is determined by whether the issue sought to be litigated



in the lower court during the appeal is "a matter affected by the appeal"). Because the automatic stay leaves the lower court no power to proceed until the appeal is resolved, there is no need to impose a supersedeas.

C.J.
FOR THE COURT

Columbia, South Carolina

cc:

The Honorable Brian M. Gibbons
Jeff Hammond, Clerk of Court
Hemphill P. Pride, II, Esquire
Robert Michael Dudek, Esquire
Matthew C. Buchanan, Esquire

FILED
3/12/14

CERTIFICATE OF SERVICE BY MAIL
Appellate Case No. 2013-002510

I, the undersigned attorney, of the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on April 11, 2014, at the following address:

Document:

MOTION TO INTERVENE

Counsel Served:

Hemphill Pride, II, Esq.
Law Office of Hemphill P. Pride II, LLC
Post Office Box 4529
Columbia, SC 29240

5th Circuit Solicitor
1701 Main Street
PO Box 192
Columbia, SC 29201

Lynn Oliver
South Carolina Department of Probation, Parole and Pardon Services
2221 Devine Street, Suite 600
P.O. Box 50666
Columbia, SC 29250

S. Harrison Saunders, VI, Esq.
Law Offices of S. Harrison Saunders, VI, LLC
1720 Main Street, Suite 301
Columbia, SC 29201



Robert P. Wood (SC Bar # 6206)

RECEIVED

APR 17 2014

SC Court of Appeals

ROGERS TOWNSEND & THOMAS, PC
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Robert P. Wood
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P 803.744.1275
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Sheri H. McClendon, Senior Paralegal
Sheri.McClendon@rtt-law.com
P 803.744.1930

Nancy Thomas, Paralegal
Nancy.Thomas@rtt-law.com
P 803.744.1874

April 11, 2014

The Honorable Jeanette F. Barber
Clerk of Court
The South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: The State v. Joseph Wright, Jr.
Appellate Case No.: 2013-002510
Our file #010869.00001

Dear Ms. Barber:

Enclosed please find for filing in your office an original and six copies of Homeowners Mortgage Enterprises, Inc.'s Motion to Intervene and Certificate of Service in the above matter. Please file the original and return a clocked copy to this office using the envelope provided.

By copy of this letter to all parties, we hereby serve them a copy of the same

Sincerely yours,

A handwritten signature in cursive script that reads "Nancy Thomas".

Nancy Thomas
Paralegal to Robert P. Wood

Enc.

cc:
Hemphill P. Pride, II, Esq.
Law Office of Hemphill P. Pride, II, LLC
Post Office Box 4529
Columbia, SC 29240

RECEIVED
APR 17 2014
SC Court of Appeals

5th Circuit Solicitor
1701 Main Street
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Columbia, SC 29201

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